IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Dr.R.K.Vyas Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.559/2004

DATE OF ORDER :: August 29, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Shreedhar Purohit, for the petitioner.

Mr.Ashok Upadhyaya, Public Prosecutor.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt.21.01.2004 passed by the Additional District Magistrate (City), Jodhpur (for short 'the Executive Magistrate' hereinafter), whereby the Executive Magistrate on an application filed by non-petitioner No.2 under sections 133 and 142 Cr.P.C., directed the petitioner to remove the obstruction alleged to have been made on gate Nos.2 and 3.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the order impugned.

It is contended by the learned counsel for the petitioner that non-petitioner No.2 filed a civil suit before the Additional Civil Judge (Junior Division) No.6, Jodhpur being Civil Original Case No.25/2004 against the present petitioner and two others, which came to be dismissed by judgment and decree dt. 23.1.2006. It is further contended that the way in question cannot be said to be a public way and, therefore, it is not a public nuisance.

On careful perusal of the order impugned, in my view, there being hardly any material to show that any gate was obstructed by the present petitioner, more particularly, the parties went to the civil suit and the civil court decided the matter against the complainant which falsifies the stand taken by the non-petitioner No.2. In the circumstances, therefore, the order impugned cannot be sustained and is liable to be set aside.

In the result, the petition is allowed. Order dt. 21.1.2004

passed by Additional District Magistrate (City), Jodhpur in Case No.02/2004 is set aside and the proceedings under section 133 Cr.P.C. stand quashed.

[H.R.PANWAR],J.

m.asif/-